

**DATE:** February 10, 2006

**TO:** Region Engineers  
Region Delivery Engineers  
TSC Managers  
Resident/Project Engineers  
Region Construction Engineers

**FROM:** Larry E. Tibbits  
Chief Operations Officer

John C. Friend  
Engineer of Delivery

**SUBJECT:** Bureau of Highway Instructional Memorandum BOH IM 2006-02  
Elimination of Retainage on Construction and Maintenance Projects  
(Supersedes BOH IM 2001-15)

This memorandum will describe a change to the retainage provision on all MDOT construction and maintenance projects. This change applies to all projects let by MDOT and contracts with railroad companies.

The 1999 Disadvantaged Business Enterprise final rules (federal regulations) require prime contractors to promptly pay retainage to subcontractors after satisfactory completion of their work. Satisfactory completion is defined as when:

- The engineer finds the work completed in accordance with the contract, plans and specifications;
- All required paperwork, including material certifications, payrolls, test reports, etc., has been received and approved by the engineer; and
- The engineer has inspected and approved the work, and has determined the final quantities.

Prime contractors believed the requirement to pay their subcontractors in full before receiving retainage from States created a financial burden for them. In response, the Federal Highway Administration (FHWA) revised the Code of Federal Regulations (CFR) to provide recipients of federal funds with three options to meet the provisions of Part 26.29 of 49 CFR, and address the prime contractors' concerns.

MDOT established a team to review the proposed options to identify the advantages and disadvantages of each option, and recommend which should be adopted. The team was comprised of representatives from MDOT, industry associations, prime contractors and subcontractors, as well as FHWA.

Based on the team's recommendation, MDOT has adopted the first CFR option, which states:

**Eliminate holding retainage from prime contractors and prohibit its holding of retainage from subcontractors.**

MDOT will implement the zero retainage option for one year on all projects as a pilot, after which it will be evaluated to decide permanent feasibility. This change will allow MDOT to be in compliance with federal regulations.

Project delivery staff are reminded to pay for contract work per section 109.06 of the standard specifications for construction. Project delivery staff are encouraged to calculate final quantities throughout the life of a project to reduce the occurrence of large balancing contract modifications at the end of a project.

In the absence of retainage, MDOT still has contract provisions to protect its interest. In the event that a contractor is overpaid on a contract, MDOT has the following clause in its contracts:

**The Contractor agrees that MDOT may offset contract overpayments made under this contract, or amounts otherwise due from the Contractor, against any other current or future construction and/or maintenance contracts between MDOT and the Contractor.**

Following is the schedule for elimination of retainage on MDOT projects:

- For projects let prior to January 1, 2006, the retainage deduction will be two percent of the total contract amount.
- For all projects let in 2006, the retainage amount will be zero. All contracts let in 2006 will include the Special Provision for Retainage (attached).

Delivery/project engineers are requested to share this instructional memorandum with the local government engineers and consultant engineers within their jurisdiction.

If you have any questions, please contact Jason Gutting, Construction Contracts Engineer at 517-322-6630 or [guttingj@michigan.gov](mailto:guttingj@michigan.gov).

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Chief Operations Officer

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Engineer of Delivery

BOHD:C/T:JJG:kab

Index: Payment to Contractors

Attachment

cc: C & T Support Area Staff  
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MICHIGAN  
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION  
FOR  
**RETAINAGE**

FIN:CRR

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C&T:APPR:GCT:DBP:11-14-05  
FHWA:APPR:11-18-05

The following deletion is made to Section 109 of the Standard Specifications for Construction.

**Delete from subsection 109.06.A, on pages 102 and 103 of the Standard Specifications for Construction, all of subsections 109.06.A.2, 109.06.A.3, and 109.06.A.4, leaving the last paragraph following 109.06.A.4.f.**